

ORIGINAL

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

JURY TRIAL DEMANDED

CV 12-553

Ezekiel Frederick, individually

Ezekiel Frederick, as Private Attorney General, and  
all statutorily protected "class members"

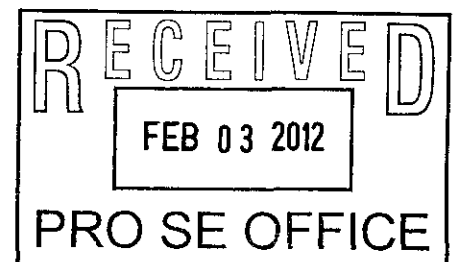
**Plaintiffs**

Wells Fargo NA et al.; New Penn Financial  
LLC, et. al.; Financial Equities Mortgage  
Bankers, et al.; Universal Mortgage Bankers,  
et al.; Belle Maison Realty, et al.; Mortgage  
Electronic Systems; and U.S. Department of  
Housing Urban and Development (HUD), et al.;  
New York State Department, Licensing Division;  
Jeff Doocy; Merissa Serna; Tom Marino; Norman Calvo;  
J.R. Nazaire; Sealy Alister; Vivian Annan; Scott  
McGoldrick and DOE 1 through DOE 30

**Defendants**

**COMPLAINT**

RICO and RICO Conspiracy;  
FHA, 42 USC §§ 3601 *et seq.*;  
ECOA, 15 U.S.C. § 1691(a)(1);  
Bivens, Bivens Conspiracy;  
5<sup>th</sup> and 14<sup>th</sup> Amendments; 42  
U.S.C. §§§§§§ 1981, 1982,  
1985, 1986, 1986, 1988 and  
2000d; Title VI and Title VIII;  
New York Law violations. . .



ROSS, J.

POLLAK, M.J

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4-A Email Thread Transcript of Communications

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4-C Comparable Sales – 964 Madison St., Bklyn

**PLAINTIFFS**

Ezekiel Frederick and all "class members"

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*Private Attorney General, Ezekiel Frederick*

**BANK RICO ENTERPRISE -- DEFENDANTS**

Wells Fargo NA -- "Wells"; New Penn Financial -- "Penn"; Financial Equities Mortgage Bankers -- "Financial"; Universal Mortgage Bankers -- "Universal"; Mortgage Electronic Systems Inc -- "MERS"

**REAL ESTATE RICO ENTERPRISE -- DEFENDANT**

Belle Maison Realty -- "Belle"; NYS Department of State, Division of Licensing Services, Complaint Review Office

**FEDERAL RICO ENTERPRISE -- Defendant**

US DEPARTMENT OF HOUSING URBAN AND DEVELOPMENT (HUD), the Secretary of (HUD), the Regional and Local Administrators of (HUD) responsible for the FHA mortgage program

**INDIVIDUAL DEFENDANTS**

Secretary of (HUD), the Regional and Local Administrators of (HUD); Jeff Doocy, NMSLR ID 393341; Merissa Serna; Tom Marino; Norman Calvo; J.R. Nazaire; Sealy Alister; Vivian Annan; Scott McGoldrick and DOE 1 through DOE 30

## Brief and Incorporated Memoranda of Law

1 Plaintiff(s) brings this action against all Defendants under 18 U.S.C. §§ 1964(c) and  
2 (d), as well as § 1962(c), a provision of the Racketeer Influenced and Corrupt Organizations  
3 Act ("RICO"), 18 U.S.C. §§ 1961-68, pursuant to a scheme and conspiracy under color of  
4 federal laws that deprived Plaintiffs of money, real estate, business and property rights in  
5 federally guaranteed fair and equal housing opportunities, which also violated *inter alia*, the  
6 Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*; ECOA, 15 U.S.C. § 1691(a)(1); 42 USC § 1981, §  
7 1982, § 1985, § 1986 and § 1988. Plaintiffs further allege state law violations for fraud,  
8 conspiracy; aiding and abetting, fraudulent concealment and deceptive business practices  
9 act ("New York Consumer Fraud Act").

10 The following causes of action, *inter alia*, is to

- 11 1. recover treble and/or compensatory damages for loss of money, property and  
12 business, in violation of RICO, 18 USC § 1964 (c) and (d), a provision of the  
13 Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961-  
14 68;
- 15 2. recover punitive damages for fraud, fraudulent concealment, breach of fiduciary  
16 duty, deceptive business practices act ("New York Consumer Fraud Act"), and  
17 negligence pursuant to New York Law.
- 18 3. obtain injunctive relief

- 19 a. compelling Bank RICO Defendants to originate the various loans  
20 *requested, for which Plaintiffs otherwise qualified, pursuant to the letter*  
21 *and spirit of the Fair Housing Act and the FHA underwriting guidelines,*  
22 b. compelling the establishment of a Ten Billion Dollar (\$10,000,000,000.00)  
23 *mortgage loan set aside for 3-4 family FHA home buyers in the protected*  
24 *class.*  
25 c. compelling Real Estate RICO Defendants to stay delivery of the deed for  
26 *974 Madison Avenue, Brooklyn, NY to any other third party, but to*  
27 *effectuate same to the Plaintiffs as per the terms of the binding offer*  
28 *acceptance, as per Bank RICO Defendants order to originate the mortgage*  
29 *loan, or*  
30 d. reversing the improper sale of 964 Madison Avenue, Brooklyn, NY to any  
31 *third party, and*  
32 e. *enjoining Defendants from all future similar discriminatory mortgage*  
33 *lending and real estate sales practices.*

34 Furthermore, this suit is in part, brought against the Secretary of **(HUD)**, the Regional  
35 and Local Administrators of **(HUD)** responsible for the FHA mortgage program, in their  
36 *official capacities and/or individually*; Plaintiffs are all statutorily protected class member  
37 home buyers and/or applicants for federally insured mortgages in the State of New York.  
38 They sue on behalf of themselves and all other similarly situated class members for *inter lia*,

39 4. discrimination by the HUD Defendants themselves and for facilitating, enabling,  
40 participating, encouraging and/or perpetuating Bank RICO Defendants'  
41 discriminatory practices. See Gautreaux v. Romney, 448 F.2d 731, 740 (7th Cir.  
42 1971) (upholding Title VI lawsuit against Secretary of HUD for perpetrating  
43 racially discriminatory conduct).

44 5. to compel the agency to permanently ban the Bank RICO Enterprises and other  
45 such violators from

46 a. participation in the federally insured mortgage program, and

47 b. the secondary market purchase of its mortgages by Fannie Mae,

48 in order to eliminate financial participation by the federal government in illegal  
49 racial discrimination pursuant to certain statutes and regulations, and the  
50 United States Constitution as well

51 6. seeking this Court' issuance of a declaratory judgment: that HUD'

52 a. implementation of policies that

53 i. imposes mortgage insurance premiums on loan applicants with a  
54 down payment of 20% or more represents disparate treatment  
55 and/or has a disparate impact on the protected class,

56 ii. authorizes lenders to overlay FHA guidelines with arbitrary,  
57 capricious and discriminatory rules, and/or

b. failure to exercise due diligence in affirmatively preventing discrimination against the statutorily protected class, for which the Fair Housing Act ("FHA") and the federally insured mortgage program was created, constitutes an abuse of discretion.

7. seeking this Court' issuance of such orders and directions to the HUD Secretary as are necessary to compel those subordinates charged with administering the FHA mortgage insurance program to affirmatively exercise reasonable care and due diligence that will prevent or substantially reduce the risk of arbitrary and capricious underwriting, leading to the herein complained of discrimination, and
8. seeking a mandatory injunction under the Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*, enjoining HUD itself from future discrimination and/or facilitating, enabling, participating, encouraging and/or perpetuating others in discriminatory lending practices.
9. for a mandatory injunction against
  - a. imposition of the discriminatory mortgage insurance premium with a down payment of 20% or more, and
  - b. future failure to affirmatively further the goals incumbent upon its Office,
10. such other and further relief as the Court may deem just and equitable, is also requested.



78           ***Injury in Fact***

79           It is beyond a doubt that Plaintiffs, who was otherwise eligible for FHA 203k  
80           mortgage loans and are denied such loans because of their race, sustained an injury  
81           in fact, one that is in no way abstract.

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82           Plaintiffs set forth that the benefits of the affirmative duty placed on federal funding  
83           agencies, created by 42 USC § 2000d, inure to all persons whose rights to equal treatment  
84           are enhanced by the positive efforts of the government. A breach of this duty, either  
85           through frank timidity or a more subtle lack of vigilance, violates the underlying right.  
86           Because HUD' failure to contribute its crucial share to the collective endeavor of eliminating  
87           discrimination, as codified in Title VI; then this failure itself amounts to an actionable  
88           violation of that title.

89           In view of the clarity of the Secretary' duty, it seems axiomatic that violations of it  
90           through HUD' inaction or indolence must be actionable. Failure of HUD "affirmatively to  
91           further the policies of [Title VIII]" is illegal in a fundamental sense. An agent of the federal  
92           government is no more at liberty to flout federal law than is a state governmental unit, or a  
93           private citizen. United States v. Nixon, 418 U.S. 683, 94 S.Ct. 3090, 41 L.Ed.2d 1039 (1974);

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94           Viewed another way, the failure of HUD to perform its legal duties mandated by §  
95           3608(d)(5) constitutes a discriminatory housing practice, in itself. Title VIII is founded on the  
96           irrefutable premise that the prevailing structure of the housing market in this country bears

the stamp of a long history of discrimination in all forms of social life. Present housing opportunities are distorted, both by the after-effects of legally sanctioned racial discrimination, and by the enduring prevalence of discrimination, despite a "complete arsenal of federal authority" aimed at eradicating it. Jones v. Alfred H. Mayer Co., 392 U.S. 409, 417, 88 S.Ct. 2186, 2191, 20 L.Ed.2d 1189 (1968).

The Supreme Court has acknowledged the "enormity of the task of assuring fair housing," Trafficante, supra, 409 U.S. at 211, 93 S.Ct. at 367. In view of the scope of the mission, the "main generating force must be private suits, like the instant case, in which the complainants act not only on their own behalf but also 'as **private attorneys general**' in vindicating a policy that Congress considered to be of highest priority." *Id.* The Attorney General is charged with enforcing the law against all persons, including federal agencies. United States v. Nixon, supra.

Similarly, the concept of private attorneys general vindicating Congressional policy logically extends to suits brought to insure that federal agencies comply with their explicit duties created by statute. For this purpose, then, therefore a private right of action exists in the instant case against HUD for violation of its affirmative duties under § 3608(d)(5).

114 ***Subject Matter Jurisdiction***

115 Plaintiffs asserts that this Court has jurisdiction under 28 U.S.C. § 1331 and 28 U.S. C.  
116 § 1343(4) (federal question); 5 U.S.C. §§ 701-706, and over the state law claims pursuant to  
117 28 U.S.C. § 1367 (supplemental).

118 The second federal question relative to the declaratory judgment and injunction is  
119 litigated under the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701-706, allows "[a]  
120 person suffering legal wrong because of agency action" to seek "judicial review thereof." §  
121 702.

122 The APA "embodies the basic presumption of judicial review to one suffering legal  
123 wrong because of agency action, or adversely affected or aggrieved by agency action within  
124 the meaning of a relevant statute." Abbott Lab. v. Gardner, 387 U.S. 136, 140, 87 S.Ct. 1507,  
125 18 L.Ed.2d 681 (1967).

126 As interpreted by courts, the APA's "final agency action" requirement for judicial  
127 review is quite broad. According to the Supreme Court, the legislative history of the APA  
128 judicial review provision "manifests a congressional intention that it covers a broad  
129 spectrum of administrative actions and therefore the APA's generous review provisions  
130 must be given a hospitable interpretation." Abbott Lab., 387 213\*213 U.S. at 140-41, 87  
131 S.Ct. 1507

132 Furthermore, as defined by the APA, agency action includes agency *inaction*, 5 U.S.C.  
133 § 551(13), so that "courts [can] compel an official to exercise his discretion when he fails or  
134 refuses to do so." *Suffolk*, 1987 WL 14131 at \*3, (holding that HUD's actions were  
135 reviewable under the APA in a case where defendants had blocked efforts to build  
136 subsidized housing in plaintiffs' town).

137 Courts have also held that "jurisdiction over APA challenges to federal agency action  
138 is vested in district courts unless a preclusion of review statute specifically bars judicial  
139 review in the district court."

140 Plaintiffs sets forth that HUD's actions do not fall into either of the two exceptions  
141 found in 5 U.S.C. § 701(a) viz:

- 142 1. the underlying statutes preclude judicial review; or
- 143 2. agency action is committed to agency discretion by law.

144 See *Heckler v. Chaney*, 470 U.S. 821, 828, 105 S.Ct. 1649, 84 L.Ed.2d 714 (1985). It is clear  
145 that the first exception does not apply because neither the National Housing Act nor the  
146 Fair Housing Act specifically precludes judicial review of actions by HUD therefore subject  
147 matter jurisdiction is properly vested in this Court.

148 Plaintiffs contends that the second exception also does not apply because although  
149 the management of HUD' mortgage insurance program is committed to agency discretion  
150 by law. The mere fact that a statute grants broad discretion to an agency does not render

151 the agency's decisions completely non-reviewable, under the "committed to agency  
152 discretion by law" exception unless the statutory scheme, taken together with other  
153 relevant materials, provides absolutely no guidance as to how that discretion is to be  
154 exercised.

155 Plaintiffs contend that although HUD was vested with broad discretion to supervise  
156 its various programs, its' discretion must be exercised within the framework of the national  
157 policy against discrimination in federally assisted housing, to the contrary it must be  
158 decidedly in favor of fair housing.

159 In *Heckler*, the Court found that although there is a presumption that judicial review  
160 is available under the APA, "*an agency's decision not to prosecute or enforce is a decision*  
161 *generally committed to an agency's absolute discretion*" and then "the presumption is that  
162 judicial review is not available." *Id.* at 831, 105 S.Ct. 1649.

163 Plaintiffs set forth that in order to rebut the presumption that judicial review is not  
164 available, the underlying statute must be drawn so as to have a "meaningful standard  
165 against which to judge the agency's exercise of discretion," or, more succinctly, there must  
166 be "law to apply." *Id.* at 830, 834, 105 S.Ct. 1649.

167 Plaintiffs set forth that the "law to apply" in this case *inter lia* is the Fair Housing Act,  
168 42 U.S.C. §§ 3601-3608. Specifically, the aim of that Act is to "provide, within constitutional  
169 limitations, for fair housing throughout the United States." § 3601. The Act prohibits all

170 practices that deny housing to persons on the basis of race, color, religion, sex, familial  
171 status, or national origin and applies to both intentional housing discrimination and all  
172 policies or practices which have a discriminatory effect, even absent intent. *Suffolk Hous.*  
173 *Serv. v. Town of Islip*, 1996 WL 75282, at \*9 (E.D.N.Y. Feb. 8, 1996) (Glasser, J.). The Act  
174 directs the Secretary of HUD to "administer the programs and activities relating to housing  
175 and urban development in a manner affirmatively to further the policies" of fair housing. §  
176 3608(e)(5).

177 In N.A.A.C.P., 817 F.2d at 149, the First Circuit held that federal courts have the legal  
178 authority to review claims that the Secretary of HUD failed to administer HUD programs in a  
179 manner to further the policies of fair housing. The plaintiff in that case sued HUD for failing  
180 "to enforce constitutional and statutory proscriptions against discrimination in Federally-  
181 assisted programs," specifically the administration of Community Development Block  
182 Grants and Urban Development Action Grants. *Id.* at 151. The court held that there were  
183 adequate standards by which to judge the lawfulness of HUD's *pattern* of conduct:

184 The standard for reviewing the instant pattern can be drawn directly from the  
185 statutory instruction to "administer" its programs "in a manner affirmatively to further the  
186 policies" of "fair housing." 42 U.S.C. §§ 3608(e)(5), 3601. This standard, like many, may be  
187 difficult to apply to borderline instances, yet this Court should be able to determine

188 1. a clear failure to live up to the instruction over time,

189 2. whether the agency's practice, over time, in respect to this mandate has been  
190 "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with  
191 law." 5 U.S.C. §§ 706(2)(A).

192 Doing so, in the context of a claim of serious failure over time to try to further Title VIII's  
193 goals, need not involve the court in "superintend[ing] economic and managerial decisions,"  
194 Hahn v. Gottlieb, 430 F.2d at 1249, or in reweighing matters that Congress has asked HUD  
195 to balance. Rather, the instant case specifically calls for a more straightforward evaluation  
196 of whether agency activity over time has furthered the statutory goal, and, if not, for an  
197 explanation of why not and a determination of whether a given explanation, in light of the  
198 statute, is satisfactory.

199 Here, Plaintiffs points not to general but to at least four specific instances of agency  
200 action (or inaction) with four different banks, whereby HUD' failure to oversee their lending  
201 practices, in effect enabled arbitrary, capricious and discriminatory application of the FHA'  
202 federally assisted lending program and the Fair Housing Act itself, resulting in injury to  
203 Plaintiffs and similarly situated others. Plaintiffs seeks monetary damages from the private  
204 parties, but only broad-based **declaratory** and **injunctive** relief is sought against HUD, in  
205 that there are specific instances through which HUD's actions may be evaluated, making  
206 Plaintiffs here more like the plaintiff in *N.A.A.C.P.*

207 Plaintiffs here challenge HUD's pattern of neglect in overseeing its mortgage  
208 insurance programs and/or warn the unsuspecting public with due diligence. This Court

may determine whether HUD's failure to oversee its mortgage insurance programs to low, moderate and middle income minority applicants – a protected class, in targeted and red-lined areas, constitutes an abdication of the Secretary's duty to administer HUD programs in a manner to further the policy of the FHA, specifically, to provide fair housing throughout the United States. In addition to the Fair Housing Act, several cases interpreting the Act also provide the Court with law to apply. See, e.g., N.A.A.C.P. v. Kemp, 721 F.Supp. 361 (D.Mass.1989) (on remand from the first circuit, fashioning declaratory and injunctive relief for HUD's failure to administer housing programs to further policies of Fair Housing Act).

#### **SOVEREIGN IMMUNITY**

This doctrine does not bar a suit such as this which is challenging alleged unconstitutional and unauthorized conduct by a federal officer. Dugan v. Rank, 372 U.S. 609, 83 S.Ct. 999, 10 L.Ed.2d 15 (1963); Bolling v. Sharpe, *supra*; Shannon v. HUD, 436 F.2d 809 (3 Cir., 1970). See also: Powelton Civic Home Owners Association v. HUD, 284 F.Supp. 809 (E.D.Pa., 1968); Hicks v. Weaver, *supra*.



Causes of Action

***Claims One and Two***

**A. RICO and RICO Conspiracy**

Allegations

Plaintiffs claim that non-federal and individual Defendants violated 18 U.S.C. § 1962(c), (d) and brings this action pursuant to 18 U.S.C. § 1964(c), (d). Plaintiffs base these claims on allegations that all individual Defendants, conspired, agreed among and between themselves, confederated, combined together, aided, abetted, assisted, advised, attempted to and did, participate in the management and operations of their respective RICO Enterprises, each directly engaged in, attempted, caused or furthered racketeering activity consisting of multiple acts of mail, wire and honest-services fraud in furtherance of several individual schemes to discriminate and deprive Plaintiffs and similarly situated other minorities of money, property and business, as well as fair and equal housing, constituting a pattern of racketeering activities of which affected interstate or foreign commerce all through systemic discriminatory lending and sales customs, policies or actual practices, causing injuries, all in violations of Sections 1962(a) and (c). See § 1962(d)

Plaintiffs bring this federal RICO class action on behalf of themselves and of similarly situated other members of the statutorily "protected-class" that, between November 1, 2006 and

16 December 31, 2011 (the "Class Period"), applied for and was unlawfully denied property and/or  
17 federally insured FHA mortgage loans, and were thereby damaged.

**B. Defendants**

The Bank RICO Defendants in this action are

**Wells Fargo NA, 2710 Wells Fargo Way, Minneapolis, MN 55467**

Wells Fargo NA, CEO DOE 1, Wells Fargo NA, CFO DOE 2, Wells Fargo NA, VP of Operations, DOE 3  
Supervisor DOE 4 and Jeff Doocy, each of the above, in their official capacities and individually.

**New Penn Financial, LLC; 425 Broadhollow Road, Suite 210, Melville, NY 11747**

New Penn Financial LLC, CEO DOE 5,; New Penn Financial LLC, CFO DOE 6, New Penn Financial  
LLC, VP of Operations DOE 7 Supervisor DOE 8 and Merissa Serna, each of the above, in their  
official capacities and individually.

**Financial Equities Mortgage Bankers; 1025 Old Country Road, Westbury, NY 11590**

Financial Equities Mortgage Bankers, CEO DOE 9, Financial Equities Mortgage Bankers, CFO DOE  
10; Financial Equities Mortgage Bankers, VP of Operations DOE 11; Supervisor DOE 12; and Tom  
Marino, each of the above, in their official capacities and individually.

**Universal Mortgage Bankers; XXX Livingston Street, Brooklyn, NY 112XX**

Universal Mortgage Bankers, VP of Operations DOE 14; each of the above, in their official capacities and individually.

**Belle Maison Realty; 990 Stewart Avenue, Suite 660, Garden City, NY 11530**

Belle Maison Realty, CEO J.R. Nazaire ("Nazaire"); Belle Maison Realty, CFO DOE 15; Belle Maison Realty, VP of Operations DOE 16; each of the above, in their official capacities and individually.

**Mortgage Electronic Systems Inc (MERS), Flint Michigan**

**NYS Department of State, Division of Licensing Services,(NYSDOS) Complaint Review Office, 123 William Street, 19th Floor, New York, NY 10038-3804; Scott McGoldrick, Senior Licensing Investigator, Complaint Review; c/o NYSDOS**

**U.S. Department of Housing Urban and Development (HUD), Washington, DC**

HUD Secretary, Doe 17; HUD Regional Director, Doe 18 and HUD Local Director, Doe 19, in their official capacities and individually.

Wells Fargo, New Penn, Financial Equities and Universal collectively, the "**Bank RICO Enterprises**"; Belle Maison Realty (BMR) and the NYSDOS, Division of Licensing, collectively the "**Real Estate RICO Enterprise**"; and the Department of Housing Urban and Development (HUD), the passive "**Federal RICO Enterprise**" collectively: the "RICO Enterprise Defendants"; and Individual Defendants, collectively: altogether the "Defendants."

Plaintiffs principally allege that Defendants intentionally or with reckless disregard materially misled, participated in, discriminated against, deprived and/or defrauded Plaintiffs in respect of money, business and real estate or mortgage loans.

**C. RICO STATEMENT**

1        Each RICO Enterprise Defendant and some of its officers, shareholders and employees  
2        conspired, agreed among and between themselves, confederated, combined together, aided,  
3        abetted, assisted, advised, attempted to and did, participate in the management and operations  
4        or "exercised broad discretion" in aiding, abetting, assisting and carrying out the objectives" of  
5        their respective RICO Enterprises; through at least two predicate racketeering acts of mail fraud,  
6        wire fraud, constituting a pattern of racketeering activities of which affected interstate or foreign  
7        commerce, all in furtherance of RICO schemes, pursuant to discriminatory lending customs,  
8        policies or actual practices, which was based on Plaintiffs' race, the racial composition of their  
9        neighborhoods, religion and/or national origin, by  
10       1. redlining communities, and/or  
11       2. denying their mortgage loan applications,  
12       in five separate but related instances that prevented the Plaintiffs from purchasing residences for  
13       which they otherwise qualified. HUD and Bank RICO Defendants actions

3. caused class members, making a 20% down payment to pay add mortgage insurance premiums, for which the aggregate amount is yet to be determined through discovery,
4. caused Plaintiffs the economic loss of approximately One Million Three Hundred Nine Thousand Dollars (\$1,309,000.00) in equity and/or value pursuant to two separate purchase agreements,
5. impaired Plaintiffs' credit scores and financing abilities. and
6. deprived Plaintiffs and similarly situated others of property and property interest in fair and equal housing ownership,

all in violation of 18 USC § 1962(a) and (c). See § 1962(d)

Plaintiffs contend that each individual Defendant was jointly and severally liable for the conduct of their joint criminal undertaking, even if they did not perform "managerial roles," in the various RICO Enterprises or was not of the class of person that performed certain acts, but nonetheless

1. "exercised broad discretion" in aiding, abetting assisting and carrying out the objectives of the RICO Enterprise. Burden, 600 F.3d at 219 (quoting United States v. Diaz, 176 F.3d 52, 92 (2d Cir. 1999)), or
2. knew the general nature of the RICO conspiracy and that the conspiracy extended beyond their individual roles, even if incapable of committing the substantive offense.. United States v. Zichettello, 208 F.3d 72, 99 (2d Cir. 2000) (quoting United States v. Rastelli, 870 F.2d 822, 828 (2d Cir. 1989)); see also Salinas v. United States, 522 U.S. 52, 64 (1997).

furthered the objectives of the RICO Enterprises by committing multiple acts of mail fraud and wire fraud, in violation of 18 USC § 1341 and § 1343.

In execution and furtherance of their unlawful schemes, the Real Estate and Bank RICO Defendants willfully,

1. incorporated the FHA programs in their Internet based advertisements,
2. accepted, obtained or caused the transmission of mortgage applications and credit reports, through
  - a. the U.S. Postal Service, and
  - b. interstate wires (fax and emails);

that was addressed to and/or from others with out-of-state headquarters and/or residences.

As HUD representatives, each Bank RICO Enterprise Defendant was an approved mortgage lender in the FHA mortgage insurance program, whereby they are required to comply with all federal regulations and procedures governing the ECOA and/or the Fair Housing Act ("FHA"); real estate sales, rental or placement practices; and/or setting forth eligibility guidelines for HUD insured mortgage loans.

The Defendants willfully and deliberately engaged in

1. redlining communities, and/or
2. targeting those with certain property demographic and socio-economic backgrounds, and
3. the addition of a fatal over-layer of conventional mortgage underwriting impediments for the intended purpose of

a. circumventing the Fair Housing Act (FHA), and

b. ultimately depriving Plaintiffs of fair housing opportunities,

all through a pattern of racketeering activities.

"Redlining" is an unlawful discriminatory anti-lending practice that has a disparate racial impact, whereby low to moderate-income racial minorities are repeatedly victimized by the imposition of badges and incidents of slavery.

The Real Estate and Bank RICO Defendants – licensed private corporations their corporate officers, shareholders, stockholders, employees, as well as individuals, *in positions of trust*, at times, acting within the scope of their employment and at other times, outside the lawful scope of that employment; but at all times acting on behalf of and in furtherance of the goals and objectives of their respective RICO Enterprises.

Plaintiff hereby sets forth that

1. predicate acts of racketeering activity are related, and that they amount to or pose a threat of continued criminal activity.

2. the Defendants did participate, attempt, aid and abet, conspired to aid, abet and assist in the (a) management of the affairs of the RICO Enterprises, and (b) execution and furtherance of predicates acts,

3. the continuity of the RICO Enterprises are pursuant to open-ended agreements of intermediate term racketeering activities in furtherance of the discriminatory lending and real estate sales schemes, which are based in their customs, policies, usages and actual practices. This fact reveals RICO Enterprises, with no intention of stopping once

75 it meets an immediate goal and therefore the conduct, is capable of repetition, yet  
76 *escaping judicial review.*

- 77 4. predicate acts are sufficiently similar, numerous and temporally related to  
78 demonstrate a pattern of racketeering activity that poses a threat of continued  
79 *criminal activity.*
- 80 5. it is beyond a doubt that Plaintiffs, who was otherwise eligible for FHA 203k mortgage  
81 loans and are denied such loans because of their race, already sustained and is under  
82 *threat of continuing 'injury in fact', one that is in no way abstract, but concrete and*  
83 *particularized*
- 

- 84 7. they suffered losses caused by the Real Estate and Bank RICO Defendants' acts,  
85 including but not limited to, the

- 86 a. Seven Hundred Sixty Nine Thousand Dollars (\$769,000.00) representing the  
87 *completed property value of 1788 St Johns Place, Brooklyn, NY,*
- 88 b. Five Hundred Sixty Nine Thousand Dollars (\$569,000.00) representing the  
89 *completed property value of 964 Madison Avenue, Brooklyn, NY,*
- 90 c. *impaired Plaintiffs' credit scores and credit worthiness in securing*
- 91 i. *primary home purchase loans,*
- 92 ii. *purchase financing for non-primary residential and/or commercial*  
93 *properties, and*
- 94 iii. *lower rate – credit cards, installment financing, revolving credit account*  
95 *and insurance.*



d. impaired Plaintiffs' contractual obligations to simultaneously start and finance two businesses, one to handle "real estate acquisitions and development" and the other in "general construction and construction management" to handle proprietary renovation contracts,

all as the result of the Bank RICO Defendants' fraudulent mortgage loan denials.

8. the award of treble, compensatory and punitive damages, as well as injunctive relief, attorneys' fees, costs and fees associated with this action pursuant to 18 U.S.C. § 1964 vis-à-vis, will remedy Plaintiff(s)' injuries in fact. Moreover, these damage awards are most likely to prevent future similar injuries by Bank and Real Estate RICO Defendants' pattern of criminal racketeering activity.

#### **D. RICO Predicate Acts**

##### **Mail and Wire Fraud**

Plaintiff(s) sets forth that all classes of Defendants committed RICO predicate acts of mail and/or wire fraud some in execution, of the discriminatory lending scheme, as herein stated in particularity, pursuant to the heightened pleading requirement of Rule 9(b) and other acts of mail and/or wire fraud in furtherance of the discriminatory lending scheme, which does not implicate the Rule 9(b) requirement.

1 **E. False Statements**

2 Plaintiffs allege that mail and email communiqués contained materially false statements  
3 that was known or should have been known to be false at the time made, including but not  
4 limited to, material omissions and material misrepresentation made by **Bank RICO Enterprise**  
5 employees:

6 **(1) Wells Fargo NA**

7 Wells Fargo NA headquartered in **Minneapolis, Minnesota**; assigned *Loan Officer and*  
8 *Renovation Specialist, Jeff Doocy*, to evaluate, package and issue the requested application  
9 preapproval letter prior to submission to its underwriting department.

10 For RICO jurisdictional purposes, Defendants caused the transmission of Plaintiffs credit  
11 reports from Experian, Transunion and Equifax, respectively located in XX, XX and XX

12 On Wednesday, December 14, 2011 at 6:45 pm, "Frederick Plaintiffs," submitted an  
13 application for FHA 203k mortgage financing to Wells Fargo NA. Plaintiffs sought a Seven  
14 Hundred Forty Thousand Dollar (\$740,000), FHA 203k mortgage for the acquisition renovation  
15 and conversion of a vacant 3 story—three family building located at 1788 St Johns Place,  
16 Brooklyn, NY 11233, into a 4 story—four family residence, whereby the property provided more  
17 than adequate collateral.

18 In email and telephone communications beginning on, about and between December 10,  
19 2011 and December 31, 2011 Mr Doocy misrepresented that

20 1. the FHA program did not permit mortgage loans for residential

21 1. mixed-use one to four family primary residence,

22 2. three to four family properties which included use of 85% of the rental income for  
23 mortgage qualifying purposes.

24 3. applicants that has a qualifying Debt to Income (DTI) ratio above 43%, without  
25 having six months of non-gifted reserves in the bank for the three prior months.

26 2. Plaintiffs' did not qualify for an FHA mortgage

27 1. because the initial DTI was above 60%,

28 2. unless the requested loan amount was substantially reduced in order to meet  
29 qualifying ratios,

30 See **Exhibit 1-B**, the complete email thread transcript of communications sent between  
31 the parties and discriminatory actions taken by Wells Fargo NA, et al., which is hereby  
32 incorporated by reference, as though set forth in full force and affect.

33 **(2) New Penn Financial,**

34 New Penn Financial LLC., is headquartered in Pennsylvania;

35 For RICO jurisdictional purposes, Defendants caused the transmission of Plaintiffs credit  
36 reports from Experian, Transunion and Equifax, respectively located in XX, XX and XX

On or about September 10, 2011 New Penn Financial assigned Ms. Merissa Serna, its

senior loan officer, to and she did evaluate, package and issue the requested application

preapproval letters preliminary to full submission to New Penn' underwriting department.

On Friday, October 7, 2011 at 14:27 pm "Frederick and Afroz Plaintiffs," terminated their prior relationship with the assigned Senior Loan Officer, Merissa Serna, at New Penn Financial, LLC, for what appeared at the time, to be dilatory and unprofessional business practices. Plaintiffs wrote:

This communiqué is to "terminate the mortgage service request" and to inform you that I find your failure to communicate with me extremely unprofessional, in that it has cost the loss of an entire week' progress.

I have two other lenders just waiting for a go signal to provide service, however, I gave you the benefit of time and opportunity.

If you could not or the bank would not make an accommodation, a simple No was in order!

This also reflects directly on your immediate supervisor' failure to properly train you in professional decorum.

Subsequent to the termination letter, on Friday, October 7, 2011, "Frederick and Afroz Plaintiffs," was convinced by Ms. Serna' superior to submit two FHA mortgage applications and did thereby obtain two separate pre-qualification letters for (2-4 family) FHA streamlined

58 mortgage loans for Three Hundred Eighty Nine Thousand Eight Hundred Sixty Dollars

59 (\$389,860.00). On Friday, October 7, 2011 at 16:15 pm, Plaintiffs wrote:

60 Attached you will find property specific 1003s for the FHA preapprovals.

61 In type, sum and substance, we now focus our discussion on the "third" FHA 203k  
62 mortgage application submitted on behalf of Daniel I. Frederick and his prequalification letter  
63 issued on November 4, 2011 for Five Hundred Fifty Six Thousand Dollar (\$556,000), for the  
64 purpose of acquiring, renovating and converting a vacant three family building located at 1788 St  
65 Johns Place, Brooklyn, NY 11233, into a four family residence, whereby at all times, the property  
66 represented adequate collateral.

67 In email, fax and telephone communications on, about and between September 10, 2011  
68 and December 13, 2011 Ms. Serna misrepresented that the FHA program did not permit  
69 mortgage loans for residential

- 70 1. mixed-use one to four family primary residence,  
71 2. conversion from a three to four family primary residence,  
72 3. renovations costing over Thirty Thousand Dollars (\$30,000.00),  
73 4. Co-habitation of two unmarried immediate family members, in one of four, 4-bedroom  
74 apartments for mortgage qualifying purposes.

75 See **Exhibit 2-B**, the complete email thread transcript of communications between the parties  
76 and discriminatory actions taken by New Penn Financial, et al., which is hereby incorporated by  
77 reference, as though set forth in full force and affect.

78

79

**(3) Financial Equities Mortgage Bankers,**

80

Financial Equities Mortgage Bankers headquartered in New York; assigned *Sales Manager*,

81

**Tom Marino** to evaluate, preapprove and underwrite Plaintiffs, Frederick and Afroz' FHA

82

mortgage loan applications.

83

For RICO jurisdictional purposes, Defendants caused the transmission of Plaintiffs credit

84

reports from Experian, Transunion and Equifax, respectively located in XX, XX and XX

85

As a result of prior experiences with New Penn Financial LLC, Plaintiffs engaged in

86

extensive pre-application discussions and simulations. All was well until submission of the

87

completed mortgage application and supporting documents, including photo identification --

88

evidencing the Plaintiffs' race along with particular socio-economic dynamics then the

89

discrimination, misrepresentations and sabotage began.

90

In email and telephone communications beginning on, about and between October 10,

91

2011 and October 31, 2011 and more specifically, only after submission of a copy the driver'

92

license, as photo identification along with one of three proto-typical Uniformed Mortgage

93

Applications on or about October 25, 2011 containing other indicas of race, nationality and socio-

94

economic characteristics of "hot zoned" or "red-lined" areas. Mr. Marino misrepresented that

95

the FHA program would not approve these types of mortgage loans because for underwriting

96

purposes, Plaintiff(s)

- 97 1. did not have at least Fifty Thousand Dollars (\$50,000.00) of seasoned reserve funds in a  
98 bank account, notwithstanding a very large compensating 25% down payment of One  
99 Hundred Ninety Thousand Dollars (\$190,000.00) – [see Exhibit 3-A, the lender' marked-up  
100 copy of Plaintiffs' Property-Mortgage Information Sheet.]
- 101 2. did not earn at least Eighty-Five Thousand Dollars (\$85,000.00) of 1040 income sufficient  
102 to carry the property, without regard for the otherwise qualifying rental income, and
- 103 3. worked for a Temp Agency, notwithstanding six years of continuous employment, four  
104 years of which was at the present employer,

105 See Exhibit 3-B, the email thread transcript of communications between the parties and  
106 discriminatory actions taken by Financial Equities Mortgage Bankers, et al., which is hereby  
107 incorporated by reference, as though set forth in full force and affect.

108

109 **(4) Universal Mortgage Bankers,**

110 Universal Mortgage Bankers, headquartered in Brooklyn, NY assigned Norman Calvo to  
111 receive, evaluate and originate Plaintiffs FHA mortgage loans.

112 From, on or about September 1, 2011 Defendants caused Plaintiffs to identify and make  
113 contact with them through a website called Scotsman, based in the state of Arizona. Plaintiffs  
114 initiated several telephone calls and emails with Norman Calvo, President of Universal Mortgage.

115 Based on Mr. Calvo' extensive knowledge and position in the local mortgage lending  
116 industry and at his invitation, Plaintiffs submitted three mortgage applications by email.

117 However, once the completed mortgage application and supporting documents, including photo  
118 identification was submitted, evidencing the Applicants' race along with particular socio-  
119 economic dynamics, the discrimination began.

120 Incident to his receipt and review, Mr. Calvo initiated an unfriendly telephone  
121 conversation on or about September 10, 2012 in which he discussed the economic dynamics  
122 contained in the mortgage applications. At the conclusion of that conversation, Mr. Calvo willfully  
123 and intentionally discriminated against Plaintiffs by, affirmatively declining to do business with  
124 any of the applicants and stated that he was going to destroy the mortgage applications and  
125 supporting documents, as if they never existed.

126 In telephone communications beginning on or about September 7, 2011 **Mr. Calvo**

- 127 1. expressed significant disapproval of the applications on their face,
- 128 2. stated that there was some misunderstanding on the telephone calls,
- 129 3. misrepresented that the FHA program would not approve the Plaintiffs' mortgage  
130 loans, and
- 131 4. blatantly refused to service the Plaintiffs, stating that he was going to destroy the  
132 mortgage applications as if they never existed.

133 **False statements made by or attributable to the Real Estate RICO Defendants**

134  
135 **(5) Belle Maison Realty**



Belle Maison Realty (BMR), headquartered in Long Island, New York; Associate Broker, Mr.

**Alister.** Plaintiffs set forth

1. the existence of a dual agency between Defendant BMR and

a. Vivian Annan, the Defendant property owner, and

b. Mortgage Electronic Systems Inc, (MERS) the Defendant mortgage lender,  
headquartered in Flint, MI.

2. for RICO jurisdictional purposes that BMR did use and cause the use of mail and  
interstate wires to negotiate the short sale and communicate purchase offers to  
MERS, in furtherance of their scheme that defrauded Plaintiffs.

Beginning on, about and between November 1, 2011 and December 3, 2011 made the following  
material

3. **omissions** in advertisements on their website based in XX, Internet listing sites and  
presentments of the property sale to Plaintiffs – that the

a. terms not readily known to Plaintiffs, e.g.

b. a “time of the essence” clause,

c. the existence of known “liens of record” against the owner and/or property,

d. the sale will be “auction styled” to the highest bidder, and

e. only the highest bid will be submitted to the seller/bank

4. **misrepresentations** by telephone to Ezekiel Frederick, with the intent to deprive  
and/or defraud Plaintiffs of money or property;

a. that the binding “full offer acceptance” will be submitted immediately to the  
owner, when in fact he had no intention on presenting and actually did not

present Plaintiffs' November 23, 2011 acceptance, nor their increased

*December 1, 2011 auction styled counter-bid to the Seller.*

on December 1, 2011; that

b. Plaintiffs' written binder acceptance for Two Hundred Ninety Nine Thousand Dollars (\$299,000.00) was required to be

- i. subject to a "time of the essence" clause – when in fact, the property turned out to be a "short sale," subject to the hindering bank approval process, and
- ii. subject to "liens of record" against the owner and/or property,

when in fact these were more "onerous and adverse terms of sale" that was not revealed or discussed prior to the Plaintiffs property inspection and binding full acceptance.

c. the property was no longer available. This was not true in the sense that it was withdrawn by the Seller prior to Plaintiffs' binding acceptance in writing and proffer of a good-faith check, but in fact, it was available and contracted to a subsequent Offeror with what was purported to be a Two Thousand Dollar (\$2,000.00) higher bid.

d. the bidding process was closed, therefore, Plaintiffs' new instant offer of \$305,000.00, could not and would not be accepted for submission to the Seller, when in fact, as of December 1, 2011 the owner and/or foreclosing bank did not even receive and/or approve any short sale. Pursuant to the Kings County Board of Realtors, the ruling custom is to submit all offers up until closing.

Furthermore, Alister clearly

3. knew the falsity of these representation(s), at the time when the statements were made,

4. expected Plaintiffs to justifiably rely upon such misrepresentation(s), to their detriment,

5. caused injuries as per Section C, Ln 86 through 101,

6. stated that it was not him, but his Broker, Mr. Nazaire that is personally responsible for the complained of course of events.

See **Exhibit 4-B**, the email thread transcript of communications between the parties and discriminatory actions taken by Belle Maison Realty, et al, which is hereby incorporated by reference, as though set forth in full force and affect.

-----  
Plaintiffs sets forth that representations from all the above officers and/or employees of RICO Enterprise Defendants above are false,

1. for reasons stated, and/or

2. in that Plaintiffs, definitively qualified on all points of controverted underwriting criteria, because FHA guidelines affirmatively sets forth each of these criteria for mortgage qualifying purposes.

These false and fraudulent statements served as the pretext for discriminatory application of otherwise "*facially neutral*,"

1. conventional mortgage underwriting scrutiny, leading to loan denials, and
2. real estate sales policies, leading to suppression and/or rejection of Plaintiffs' acceptance binder,

vis-à-vis non-African American loan applicants or real estate purchasers. Through this misconduct  
Bank RICO Defendants and Real Estate RICO Defendants affirmatively

1. disallowed Plaintiffs' rightful reliance, as per FHA proviso, to include eighty-five percent (85%) of rental income for 3-4 family homes for mortgage qualifying purposes – *Wells Fargo*
2. misapplied what was represented to be FHA' maximum 43% Debt to Income (DTI) ratio, above which compensating factors were required, when in fact FHA' maximum DTI is 47% – *Wells Fargo*
3. required Plaintiffs to demonstrate possession of six months of *non-gifted* cash reserves, in a bank account for the prior three months, when no such FHA requirement existed – *Wells Fargo*
4. disallowed Plaintiffs' six years of continuous employment, four of which was with one employer through a temp agency, when FHA has no such employment restriction for mortgage qualifying purposes – *Financial Equities*
5. disallowed Plaintiffs' otherwise seasoned credit profile because it did not include a substantial auto loan, when FHA has no such exclusion, but authorizes alternative credit sourcing – *Financial Equities*
6. disallowed the co-habitation of two immediate and unmarried family members, in one of four 4-bedroom units, when FHA rules permit, rather, requires that co-

221 borrowers attest to under penalty of perjury and actually occupy the mortgaged

222 premises for one year, whether or not living in one or two units – *New Penn*

223 7. arbitrarily reduced Plaintiff' income by the amount of unreimbursed expenses claimed

224 on Schedule A of the 1040, when FHA has no such requirement – *Financial Equities*

225 8. restricted Plaintiffs' conversions of the property from three units to a four family

226 residence, when FHA has no such restriction – *New Penn*

227 9. restricted Plaintiffs' ability to make substantial renovations exceeding Thirty Thousand

228 Dollars (\$30,000.00) through the FHA 203k loan, when FHA has no such restriction,

229 10. disallowed the FHA 203k mortgage for mixed-use residential properties, when FHA

230 provides for same – *New Penn and Wells Fargo*

231 all intended to for the purpose of

232 1. denying Plaintiffs' mortgage applications. Bank RICO Defendants did not provide Plaintiffs

233 with any legitimate reasons for rejecting their mortgage applications. In fact, RICO

234 Defendants' subjective application or unlawful misapplication, as the case may be, of

235 a. FHA' 3-4 family mortgage underwriting criteria, and

236 b. real estate sales customs, policies or actual practices,

237 against African Americans, certainly results in or will result in disproportionately

238 c. higher rates of mortgage loan denials, and

239 d. lower rates of homeownership,

240 2. fraudulently causing the combined loss of or defrauded Plaintiffs of One Million Three

241 Hundred Thirty Eight Thousand Dollars (\$1,338,000.00) of contract equity/completed

242 value, real estate and business, as well as property interest in the Fair Housing Act'

243 *guarantee of fair ownership opportunities.*

244 Bank RICO Defendant—New Penn issued preapproval letters for the sole purpose of  
245 empowering Plaintiffs to make credible purchase offers on 3-4 family properties resulting  
246 in a binding full acceptance offers/contracts for properties located at 1788 St Johns Place  
247 and 964 Madison Street, both in Brooklyn, NY, purely based on the instant expectation of  
248 securing FHA 203k mortgage loans.

249 all in violation of 18 U.S.C. § 1964 (c) and (d); Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*; ECOA,  
250 15 U.S.C. § 1691(a)(1); 42 USC § 1981, § 1982, § 1984 and § 1985; state law fraud, conspiracy;  
251 aiding and abetting, fraudulent concealment and deceptive business practices act ("New York  
252 Consumer Fraud Act").

253

#### F. RACIAL DISCRIMINATION – FACTUAL ALLEGATIONS

Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*; ECOA, 15 U.S.C. § 1691(a)(1); Bivens, Bivens Conspiracy;

Equal Protection, Procedural and Substantive Due Process Clauses of the 5<sup>th</sup> Amendment as  
incorporated in the 14<sup>th</sup> Amendment; as well as 42 USC §§§§§ 1981, 1982, 1985, 1986 and 1986; Title  
VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, Title VIII of the Civil Rights Act of 1968, 42  
U.S.C. § 3601 *et seq.*, the Civil Rights Act of 1871, 42 U.S.C.

Plaintiffs allege that the Defendant Enterprises and some of its officers, shareholders and employees conspired, agreed among and between themselves, confederated, combined together, aided, abetted, assisted, advised, attempted to and did

1. engage in discriminatory lending scheme(s) that deprived them of property and property interest in money, real estate, business, contracts; fair housing opportunities; equal protection; rights, privileges and immunities under the law, and
  2. fail to prevent the discriminatory lending schemes that resulted in the deprivation of property and property interest in money, real estate, business, contracts; fair housing opportunities; equal protection; rights, privileges and immunities under the law,
- thereby imposing the badges and incidences of slavery,

Plaintiffs set forth that Bank RICO Defendants, as HUD authorized lenders,

1. acted under color of federal law
  - a. at times, pursuant to HUD' official right, as if accorded, a full delegation of legislative authority, to write an over-layer of substantive guidelines for carrying out and facilitating the federally funded and HUD administered FHA program, and
  - b. at other times, outside the scope of any legitimate purpose or lawful function, imposing substantive guidelines that contravened *inter lia.*, the Fair Housing Act' (FHA) anti-discriminatory purpose,
2. acted as if their de facto governmental decisions were final and unappealable,

Plaintiffs set forth that the respective racial population of the subject neighborhoods was and still is made-up of over 80 percent minorities (African-Caribbean Americans, Middle Easterners and others) and alleges both

1. disparate intent or impact, and
2. intended or actual disparate treatment ,

causes of action, contending that all classes of Defendants have engaged in unfair and discriminatory business practices that have prevented them and similarly situated others from

1. obtaining FHA mortgages for 3-4 family residences, and
2. purchasing 3 to 4 family homes.

Plaintiffs herein describes the symbiotic relationship between Bank RICO Defendants and the federal government, satisfying the threshold requirement of governmental actions for the protections of the 5th Amendment Due Process, as well as the equal protection, procedural and substantive due process clauses of the 14<sup>th</sup> Amendment, as follows:

Defendants are required to comply with all federal regulations and procedures governing the ECOA and Fair Housing Act ("FHA"); real estate sales, and setting forth eligibility guidelines for HUD insured mortgage loans.



In support of their disparate impact claim, Plaintiff alleges that all classes of RICO Enterprise Defendants engaged in certain practices that has disproportionate impacts on the African-Caribbean American protected-class of credit, loan and home-buying applicants.

For example,

1. Bank RICO Defendants routinely discriminate against and reject mortgage loan applications for the acquisition and/or rehabilitation of 3-4 family properties, whenever
  - a. the applicants are African-Caribbean Americans or of African descent, and/or
  - b. the neighborhood demonstrates related socio-economic characteristics – in other words “hot zones” or “redlined areas,” and
  - c. the applicants had a supplemental reliance on FHA’ provisional inclusion of Eighty-five (85%) percent of the rental income for mortgage qualifying purposes,
2. Real Estate RICO Defendants normally demonstrates a particular bias against African American home buyers vis-à-vis whites and other minority home buyers; in the form of price and/or terms of purchase,
3. Federal RICO Enterprise Defendants, did imposed new facially neutral but discriminatory policy changes, which has a disparate impact on a protected class of moderate to median income loan applicants, because it increases the monthly payment on a 30 year mortgage by 1.1%, to cover a “mortgage insurance premium,” notwithstanding a down payment equal to or greater than 20%.

---

Plaintiffs hereby challenges the above policies as

---

1. making loans unavailable or on terms that are more onerous on the protected class than conventional mortgage underwriting prerequisites, and
  2. having a disparate and disqualifying impact on a protected class of moderate to median income earners that almost always choose 30 year mortgages, simply because they cannot afford 15 year mortgages, and
  3. providing a skewed reward of a (1.1%) lower monthly cost, to higher income non-class members that can afford a 15 year mortgage.
- 

For mortgage qualifying purposes, these rules actually penalizes the protected class of loan applicants with moderate to median incomes that could afford it the least, by saddling them with the added premium while rewarding non-class member loan applicants with exemptions.

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Example: Under the old policy, a median income member applicants of the protected class living in New Yorker that could make a 20% down payment on an affordable 30 year mortgage with a DTI of 47%, would be exempted from the disqualifying higher cost burden of mortgage insurance; However, under the new discriminatory policy that eliminates this exemption, the applicant would no longer income qualify, for the same mortgage loan. The new policy has a disparate impact on the protected class of loan applicants.

---

All of the above policies disproportionately affect African-Caribbean Americans.

Plaintiffs' hereby demonstrates that the Real Estate, Bank and Federal RICO Enterprise Defendants' facially neutral sales customs and lending policies are to the contrary, in actual practice being applied in an arbitrary and capricious manner that "*has and will predictably*

*continue to results in racial discrimination” against African-Caribbean Americans. Defendants adopted their respective policies or actual practices because of animus, specifically toward African-Caribbean Americans and other minorities in general.*

In support for these intended or actual disparate impact and treatment claims, Plaintiffs contend that they were *discriminated against notwithstanding the fact that Plaintiffs*

1. meet the seller’ Two Hundred Ninety Nine Thousand Dollars (\$299,000.00) asking price by written acceptance, only to be defrauded of the contractual equity eight days later. After inspecting the property, Plaintiffs were now required to purchase on new terms that was too onerous to meet, because of race, as per Real Estate RICO Defendant’ customs, policies or actual discriminatory sales practices.
2. were equally or more qualified than non-African American FHA applicants, however, pursuant to Bank RICO Defendants’ customs, policies or actual practices, the loan officers to whom the subject mortgage applications were assigned, deliberately and unlawfully
  - a. failed to adequately and properly consider their applications in light of FHA’ underwriting guidelines, and
  - b. subjected those applications to discriminatory and onerous non-FHA underwriting requirements,

even though pursuant to FHA guidelines, the type of proposed acquisitions and renovations, residential conversions, loan limits, down payments, closing costs, interest rate buy-down, debt ratios, collateral values, credit scores and gross qualifying incomes, were actually encouraged and promoted, not problematic.

Plaintiffs also enumerate a couple more specific allegations of their disparate treatment claim that relative to the “protected-class” of African-Caribbean Americans, in particular and other minorities in general, the Bank RICO Enterprises, specifically and American Banks generally, have for many years deliberately

1. made FHA mortgage loans for 3-4 family properties particularly unavailable to class members,
2. prevented class members from obtaining home loans at market rates, and
3. failed to provide class members with housing loans in a nondiscriminatory manner.

***Wells Fargo NA; Officers Doe 1 through 5, individually and Jeff Doocy***

Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*; ECOA, 15 U.S.C. § 1691(a)(1); Bivens, Bivens Conspiracy; Equal Protection, Procedural and Substantive Due Process Clauses of the 5<sup>th</sup> Amendment as incorporated in the 14<sup>th</sup> Amendment; as well as 42 USC §§§§§ 1981, 1982, 1985, 1986 and 1986; Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, Title VIII of the Civil Rights Act of 1968, 42 U.S.C. § 3601 *et seq.*, the Civil Rights Act of 1871, 42 U.S.C.; state law fraud, conspiracy; aiding and abetting, fraudulent concealment and deceptive business practices act (“New York Consumer Fraud Act”).

Plaintiffs hereby realleges: Sections A, C, E, Ln 6 through 31; and F

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***CLAIMS TWENTY FIVE – FORTY SIX******New Penn Financial; Officers Doe 1 through 5, individually and Merissa Serna***

Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*; ECOA, 15 U.S.C. § 1691(a)(1); Bivens, Bivens Conspiracy; Equal Protection, Procedural and Substantive Due Process Clauses of the 5<sup>th</sup> Amendment as incorporated in the 14<sup>th</sup> Amendment; as well as 42 USC §§§§§ 1981, 1982, 1985, 1986 and 1986; Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, Title VIII of the Civil Rights Act of 1968, 42 U.S.C. § 3601 *et seq.*, the Civil Rights Act of 1871, 42 U.S.C.; state law

act ("New York Consumer Fraud Act").

Plaintiffs hereby realleges: Sections A, C, E, Ln 32 through 78; and F

**CLAIM FORTY SEVEN – SIXTY EIGHT**

***Financial Equities Mortgage Bankers; Officers Doe 1 through 5, individually and Tom Marino***

Fair Housing Act, 42 U.S.C. §§§ 3601 *et seq.*; ECOA, 15 U.S.C. § 1691(a)(1); Bivens, Bivens  
Conspiracy; Equal Protection, Procedural and Substantive Due Process Clauses of the 5<sup>th</sup>  
Amendment as incorporated in the 14<sup>th</sup> Amendment; as well as 42 USC §§§§§ 1981, 1982, 1985,  
1986 and 1986; Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, Title VIII of the  
Civil Rights Act of 1968, 42 U.S.C. § 3601 *et seq.*, the Civil Rights Act of 1871, 42 U.S.C.; state law  
fraud, conspiracy; aiding and abetting, fraudulent concealment and deceptive business practices  
act ("New York Consumer Fraud Act").

Plaintiffs hereby realleges: Sections A, C, E, Ln 80 through 108; and F;

**CLAIMS SIXTY NINE – NINETY**

***Universal Mortgage Bankers, Norman Calvo and Officers Doe 1 through 5, individually***

Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*; ECOA, 15 U.S.C. § 1691(a)(1); Bivens, Bivens Conspiracy; Equal Protection, Procedural and Substantive Due Process Clauses of the 5<sup>th</sup> Amendment as incorporated in the 14<sup>th</sup> Amendment; as well as 42 USC §§§§§ 1981, 1982, 1985, 1986 and 1986; Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, Title VIII of the Civil Rights Act of 1968, 42 U.S.C. § 3601 *et seq.*, the Civil Rights Act of 1871, 42 U.S.C.; state law fraud, conspiracy; aiding and abetting, fraudulent concealment and deceptive business practices act ("New York Consumer Fraud Act").

Plaintiffs hereby realleges: Sections A, C, E, Ln 110 through 135; and F;

**CLAIMS NINETY ONE – ONE HUNDRED TWELVE**

***Belle Maison Realty, J.R. Nazaire, Officers Doe 1 through 5, individually and Sealy Alister;***

***Annan Vivian; Mortgage Electronic Registration Systems, Inc (MERS) and New York State***

***Licensing Division***

Fair Housing Act, 42 U.S.C. §§§ 3601 *et seq.*; ECOA, 15 U.S.C. § 1691(a)(1); Bivens, Bivens Conspiracy; Equal Protection, Procedural and Substantive Due Process Clauses of the 5<sup>th</sup> Amendment as incorporated in the 14<sup>th</sup> Amendment; as well as 42 USC §§§§§ 1981, 1982, 1985, 1986 and 1986; Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, Title VIII of the

Civil Rights Act of 1968, 42 U.S.C. § 3601 *et seq.*, the Civil Rights Act of 1871, 42 U.S.C.; state law fraud, conspiracy; *aiding and abetting*, *fraudulent concealment and deceptive business practices* act ("New York Consumer Fraud Act") and New York Executive Law § 296(5)(a)(1); tortuous interference with contract, and for declaratory and injunctive relief.

Plaintiffs hereby realleges: Sections A, C, E, Ln 138 through 250; and F;

1 Plaintiffs sets forth that

2 3. as African-Caribbean and Middle Eastern Americans, they are members of a class  
3 protected by the statute,

4 4. a dual agency existed between Defendant BMR and the Defendant property owner, as  
5 well as Defendant BMR and the Defendant lender.

6 5. they sought and was qualified to purchase the property located at 964 Madison  
7 Avenue, Brooklyn, NY,

8 6. Defendants made material omissions/misrepresentations,

9 7. Defendants fraudulently concealed material facts,,

10 8. they were rejected only after

11 a. meeting with the Real Estate RICO Enterprise' Associate Broker, Alister for the  
12 property inspection on or about November 23, 2011,

13 b. providing the mandatory

14 i. proof of funds for an "all-cash" purchase, or

15 ii. FHA 203k mortgage preapproval letter.



16 Plaintiffs submitted two separate FHA 203k mortgage preapproval letters in the  
17 amount of Three Hundred Eighty Nine Thousand Dollars (\$389,000.00),

18 c. providing a written binder accepting the offer to sell for the full net asking price of  
19 Two Hundred Ninety Nine Thousand Dollars (\$299,000.00), with a 45 day closing.

20 The Plaintiffs contend, *inter alia*, that the real estate RICO Defendants' defrauded them of  
21 contractual equity/value in the property binder acceptance and deprived them of fair and equal  
22 opportunity to purchase, by imposing conditions and terms on the acquisition of said property,  
23 such that ostensibly available property, is effectively unavailable to them and other members of  
24 the statutorily protected group, these includes but are not limited to:

- 25 1. refusing to submit Plaintiffs' full acceptance binder to the owner and the foreclosing  
26 bank, MERS within 24 hours, in the first instance;
- 27 2. refusing to facilitate the sale of 964 Madison Avenue, Brooklyn, NY, after Plaintiffs  
28 personally inspected the property and submitted their unconditional and full  
29 acceptance of the offer to sell for Two Hundred Ninety Nine Thousand Dollars  
30 (\$299,000.00),
- 31 3. further holding Plaintiffs' acceptance binder for seven (7) additional days while  
32 actively soliciting and structuring a Two Thousand Dollar (\$2,000.00) higher  
33 subsequent offer, on arguably better terms;
- 34 4. making the proprietary decision, as to which offer the Seller will accept,
- 35 5. failing to advised them of material and essential terms of sale, complained of herein,
- 36 6. refusing to accept Plaintiffs' countering "triple net" purchase offer of Three Hundred  
37 Five Thousand Dollars (\$305,000.00) against the new Buyer' ultimately successful

seller interested in concluding the "best deal" possible presumably would welcome  
additional, higher bids,

7. making tardy demands for the purchase be made on more onerous and discriminatory  
terms. e.g.

a. "all cash,"

b. quite claim title subject to all unknown or unrevealed material facts, and

c. subject to "time of the essence",

9. falsely stating that the property was no longer available, when in fact, it was still not  
in contract as of December 1, 2011,

10. failing to be professional, courteous, honest, fair and truthful,

all constituting serious departures from the prevailing real estate customs of Kings County NY,  
created inferences of capricious and intentionally discriminatory sales practices. Furthermore,  
the phantom or unidentified Buyer(s) were afforded the benefits of insider information that  
could only be provided by the Real Estate RICO Defendants in closely structuring the better terms  
of his/her/their offer.

Annan Vivian is hereby sued on the liability theory as owner; master-agent and co-  
conspirator with BMR and to stay or undo the sale to any third party; MERS is hereby sued on the  
liability theory as mortgage lender, master-agent capacity with BMR and to stay the foreclosure  
or short sale; New York State Licensing Division is hereby sued for their failure to properly  
supervise, investigate and/or censor the Defendants after a formal complaint had been filed.

**US Department of Housing Urban and Development (HUD), the Secretary of (HUD), the  
Regional and Local Administrators of (HUD) responsible for the FHA mortgage program, in their  
official capacities and individually**

Administrative Procedure Act ("APA"), 5 U.S.C. §§§ 701-706; National Housing Act, 12 U.S.C. §§  
1708, 1709; Fair Housing Act, 42 U.S.C. §§§ 3601 *et seq.*; ECOA, 15 U.S.C. § 1691(a)(1); Bivens,  
Bivens Conspiracy; Equal Protection, Procedural and Substantive Due Process Clauses of the 5<sup>th</sup>  
Amendment as incorporated in the 14<sup>th</sup> Amendment; as well as 42 USC §§§§§ 1981, 1982, 1985,  
1986 and 1986; Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, Title VIII of the  
Civil Rights Act of 1968, 42 U.S.C. § 3601 *et seq.*, the Civil Rights Act of 1871, 42 U.S.C.;

1        Plaintiffs hereby realleges: Section A, Ln 1 through 18; Section C, Ln 1 through 64; Section  
2        E, Ln 133 through 181; Section F, Lines 17 through 40; Section G, Ln 1 through 74; Section H, Ln 1  
3        through 11;

4        Plaintiffs sets forth that pursuant to 12 U.S.C. § 1709, through the Federal Housing  
5        Administration ("FHA"), the Secretary of HUD is authorized to insure mortgages and administer  
6        rehabilitation loans to home-buyers that wish to purchase houses in need of repair or  
7        modernization, but who cannot afford the interim financing necessary to do either.

8        In the spirit of statutory mandates designed to eradicate the "badges and incidences of  
9        slavery," Plaintiffs hereby alleges that HUD, as a federal funding agency, its Secretary, as well as,

Regional and Local Directors, responsible for the FHA program, as the “Gate-Keeper,” et al, knowingly and willfully conspired to

1. abdicate and did abdicate its duty to “affirmatively further” the goals of the Fair Housing Act (FHA),
2. impose and did impose a new facially neutral but discriminatory policy change – in allowing unlawful discriminatory lender overlays that serves no affirmative or legitimate governmental purpose, but in fact, has a disparate impact on the very people that the Fair Housing Act (FHA) was designed to help,
3. impose and did more recently impose a new facially neutral but discriminatory underwriting change, which has a disparate impact on a protected class of lower income loan applicant, because it increases the monthly mortgage payment by 1.1% to cover the “mortgage insurance premium,” notwithstanding a down payment equal to or greater than 20%.
4. fail and did fail to discharge duties under certain provisions of the National Housing Act, 12 U.S.C. §§ 1708 and 1709; by not affirmatively
  - a. warning prospective purchasers/borrowers of known redlined areas and substantial risk to them of the dangers of falling prey to discriminatory lending schemes, and
  - b. creating a HUD anti-discriminatory attestation form be rated and signed by all loan applicants – a fair housing and equal credit opportunity monitoring system.

Plaintiffs hereby sues HUD, its Secretary, et al.,

- 31 5. for discrimination and facilitating, enabling, participating, encouraging and/or  
32 perpetuating Bank RICO Defendants' discriminatory practices. See Gautreaux v.  
33 Romney, 448 F.2d 731, 740 (7th Cir. 1971) (upholding Title VI lawsuit against Secretary  
34 of HUD for perpetrating racially discriminatory conduct).
- 35 6. to compel the agency to permanently ban the Bank RICO Enterprises and other such  
36 violators from the federally insured mortgage program.
- 37 7. seeking this Court' issuance of a declaratory judgment: that HUD'  
38 a. imposition of a policy that in effect authorizes lenders to overlay FHA guidelines  
39 with discriminatory rules, and/or  
40 b. failure to exercise due diligence in affirmatively preventing discrimination  
41 against the statutorily protected class, for which the Fair Housing Act ("FHA")  
42 and the federally insured mortgage program was created,  
43 constitutes an abuse of discretion.
- 44 8. seeking this Court' issuance of such orders and directions to the HUD Secretary as are  
45 necessary to compel those subordinates charged with administering the FHA  
46 mortgage insurance program to affirmatively exercise reasonable care and due  
47 diligence that will prevent or substantially reduce the risk of arbitrary and capricious  
48 underwriting, leading to the herein complained of discrimination, and
- 49 9. seeking a mandatory injunction under the Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*,  
50 enjoining HUD from future discrimination and facilitating, enabling, participating,  
51 encouraging and/or perpetuating discriminatory lending practices.

52 Plaintiffs allege that HUD, as a federal funding agency, served as a joint actor, aider and  
53 abettor that assisted the funding recipients, by nurturing the discriminatory conduct. Young v.  
54 Pierce, 544 F.Supp. 1010, 1015 (E.D.Tex. 1982).

55 Plaintiffs, as otherwise qualified and responsible home seekers were denied FHA' source  
56 of credit, without proper regard for their capacity to repay the loans, thereby raising serious  
57 federal questions and fair housing concerns that if proven, effectively

- 58 1. contravenes Congressional intent embodied in the National Housing Act, the Fair  
59 Housing Act, Title VI, Title VIII and other anti-discrimination legislation upon which this  
60 suit is brought, by imposing the very "badges and incidences" of slavery the legislation  
61 was designed to eradicate, and
- 62 2. undermines our nation's recovery efforts.

63 Plaintiffs set forth as a preliminary matter of law that pursuant to its mandate, HUD must  
64 enforce the nation's housing laws and follow its own rules, which *inter lia.*, requires a minimum  
65 FICO credit score of 580, a maximum debt-to-income (DTI) of 47% and a maximum HOC of 85%  
66 for 3-4 family properties; yet HUD RICO Defendants permit, facilitate or sanctions, the Bank RICO  
67 Defendants' discriminatory imposition of a significantly higher score, lower DTI and lower, if any  
68 HOC.

69 Plaintiffs have a justifiable expectation that the FHA loan rules have the force of law and  
70 final say in such matters, but the truth is that HUD, as a funding agency in the face of this nation's  
71 long history of racial discrimination and need to spur the housing recovery, has

1. completely abdicated its mandate and *"affirmative duty to further,"* the twin goals of the Fair Housing Act, and
2. adopted facially neutral policies, customs or actual practices that operates in contravention of the Act and rather now
  - a. brings the FHA program into conformity with banking industry practices, which has historically been disparate in its treatment and/or impact on a statutorily protected class, , and
  - b. retards the nation's housing recovery, by preventing class members from taking advantage of historically low mortgage rates and lower cost homes.

It is with HUD' authorization and permission that Bank RICO Defendants freely contravene the law with impunity, by requiring, *inter lia*, the same higher FICOs, DTIs and lower, if any, HOC that the FHA program was designed to mitigate against. The caveat is that these policy overlays must be applied equally to all applicants, do not plainly violate fair housing laws, and can arguably be presented as *"reasonable and customary"* in the industry.

Plaintiffs set forth that

1. what the banking industry deems to be *"reasonable and customary"* practices for *"whites,"* historically has had a disparate impact on African-Americans,
2. each of these HUD authorized policy overlays are consumer-oriented with major market impact, yet they remain undisclosed and are routinely applied by loan officers and underwriters alike, in an arbitrary, capricious and discriminatory manner, and
3. these policies or actual practices are intended to and does have a disparate impact on a statutorily protected class.

Furthermore, the FHA program itself is the product of an arsenal of legislative enactments,  
designed as the first line of

1. defense in combating, and

2. offense, charged with totally defeating,

what has become institutionalized discriminatory practices. HUD alone has the affirmative duty  
to ensure that the federal government does not financially participate in or otherwise support  
the discriminatory practices of others, by barring all violators of law from

1. borrowing money from the U.S. Treasury at the discount rate, and

2. selling their mortgages to Fannie Mae,

3. participation in the FHA program. and

4. substantial civil penalties any other tools available.

The instant case as well as other cited cases, HUD was a partner in discrimination, and  
should be held responsible for this complicity. Title VI and VIII of the Civil Rights Act creates  
affirmative duties for HUD to eliminate discrimination based on a number of factors therefore,  
this instant private right of action against HUD as a federal funding agency is implied according to  
precisely the same logic which justifies the private right of action against the recipients of federal  
aid. See, e.g., Little Earth of United Tribes, Inc. v. U.S. Dept. of Housing & Urban Dev., 584 F.Supp.  
1292, 1297 (D.Minn.1983) (denying summary judgment on Title VI claim against HUD on the  
grounds that plaintiffs alleged that "the agency itself has violated the federal statute").



Here, Plaintiffs set forth that the HUD Secretary, was not only aware of the long history of slavery here in America and the more recent institutionalized propensity to impose its badges and incidences, but lead the charge in discriminatory practices with a disparate impact, in that

1. HUD as the Funding Agency, itself effectively imposed higher mortgage rates through insurance premiums on 30 year loans with down payments of 20% or more, and
2. HUD enabled its lenders, by sanctioning their use of facially neutral but discriminatory underwriting policy overlays that was only limited by the lenders' lack of ingenuity.

that violated Plaintiffs' rights,

In the instant case, Plaintiffs applied for the FHA insured mortgages as they were required to and did submit application data including specific details about employment, income, and the sources of that income. FHA income requirements include dollar amounts, history, sources and stability of Plaintiffs' income from employment listed on the Uniform Mortgage Application (UMA) and as in the instant circumstances prospective rental income from 3-4 family property, subject only to a HOC of 85% (FHA' gross vacancy and maintenance adjustment) must also be included for mortgage qualifying purposes.

FHA guidelines provided Plaintiffs with a maximum debt-to-income ratio (DTI) of 47% -- the amount of money going out versus the amount of money coming in, which must be calculated using all verifiable and reliable income, including in this instance, Plaintiffs' long term employment through a temp agency. The FHA has rules about the nature of the income that can be used for this calculation. Specifically, as listed in HUD 4155.1 4.D.1., income may be used in calculating the borrower's income ratios if it comes from any source that

1. can be verified

2. is stable, or

3. will continue.

It's also important to note that the "stable and likely to continue" requirement does not necessarily take into account the length of time Plaintiffs has been in his, her or their current jobs. In order for Plaintiffs to be eligible for a mortgage, FHA does not require

1. a minimum length of time that Plaintiffs must have held a particular position of employment, or

2. that Plaintiffs' employment be from a single employer vis a vis multiple employers or a temp agency,

therefore the Bank RICO Defendants were constrained to simply verifying the Plaintiffs' continuous employment for the most recent two full years.

Plaintiffs set forth that notwithstanding Wells Fargo' arbitrary, capricious and discriminatory application of FHA' underwriting criteria, they still qualified with a 42.89% DTI, which was certainly below Defendant' required 43% DTI, (see attached Exhibit 1-A2,) but was still denied access to the FHA source of credit, because the Defendants would only use either

1. the conventional 75% HOC, or

2. Plaintiffs' gross personal income,

but not both in combination, as it should be for mortgage qualifying purposes. This adverse application of FHA' underwriting criteria, resulted in a reported DTI that exceeded 60% and

154 triggered Defendants' additional demand for "compensating factors" such as a down payment  
155 larger than the proposed 6.6% and a large non-gifted cash reserve.

156 Plaintiffs set forth that although FHA loans does have policy requirements, minimums, and  
157 guidelines that must be followed, in practice, HUD does not "*affirmatively further*" the twin goals  
158 of the Fair Housing Act, by using its leverage to enforce the nation's laws by compelling lenders to  
159 uniformly

160 1. offer all FHA insured loan products, and

161 2. issue insured loans that fall within FHA guidelines, but outside the lender's usual  
162 qualifying ratios,

163 without requiring "compensating factors" such as a larger down payment, large cash reserves or  
164 other factors.

165 HUD was an *active participant* that could have altogether prevented or ended these  
166 violations at any time by,

167 1 not imposing in the first instance or simply nullifying the mortgage insurance premium  
168 rule change, and/or

169 2. withdrawing the authorization for lender overlays

170 at any time. Consequently, its own discriminatory conduct in this respect is violative of 42  
171 U.S.C.2000d.

172 Plaintiffs' allegations in this ease also fall within the "narrow circumstances involving  
173 allegations that HUD has 'consciously and expressly' abdicated its enforcement duties; that it  
174 acquiesced or actively participated in discriminatory practices." Marlow v. U.S. Dept. of Educ., 820  
175 F.2d 581, 583 (2d Cir. 1987).

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177 Plaintiffs set forth that this Court' recognition of a private right of action against HUD in  
178 this case furthers Titles VI and VIII' purpose of both avoiding the use of federal funds to  
179 discriminate or support discrimination, providing Plaintiffs and similarly situated others with  
180 effective protection against discriminatory lending practices.

181 Plaintiffs further contends that this conduct constitutes a blatant contravention of  
182 governmental purpose in the Act and violation of law, in that HUD did not simply have some  
183 general duty of oversight, there was and still remains an affirmative and specific legal duty to  
184 oversee and further the goals of the FHA program. For this abdication of a known legal duty, the  
185 Secretary is not shielded, but is liable.

186 Specifically, Plaintiffs point to the fact that in conspiring with and/or acting on HUD'  
187 behalf, each Bank RICO Defendant without supervision, was permitted to and did intentionally  
188 pre-design and impose their own racially discriminatory lending policies that were overlaid on the  
189 FHA' underwriting guidelines producing the desired disparate impact. These discriminatory  
190 policy overlays penalized Plaintiffs and other similarly situated members of the statutorily  
191 protected class -- constructively defeating the Congressional mandate and rule of law, to protect

192 this very class from the "badges and incidences of slavery," by rather *affirmatively furthering* the  
193 *Fair Housing Act's* statutory goals.

194 Plaintiffs contend that HUD should have provided appropriate warnings to the protected  
195 class of loan applicants and home buyers, because it had actual knowledge that the

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- 196 1. targeted areas was "redlined," and  
197 2. victims were low, moderate and middle income racial minorities ,

198 Furthermore the process HUD used to evaluate applications for mortgage insurance, omits  
199 to exercise any or a sufficient amount of precaution or diligence against discriminatory practices,  
200 notwithstanding their mandate to *affirmatively further*, which includes preventing contravention  
201 of the goals of the Fair Housing Act.

202 Finally, although HUD' public policy statement is that it

- 203 1. provides non-discriminatory underwriting criteria for federally insured mortgage  
204 loans, and  
205 2. promotes fair and equal housing opportunities,

206 the actual private practice, custom and usage, is to authorize, permit and encourage individual  
207 lenders to add-on an unmonitored over-layer of their own arbitrary, capricious and  
208 discriminatory lending criteria, resulting in injury to the same statutorily "protected class" it is  
209 charged with protecting, thus contravening both the National and Fair Housing Acts.

210 These permissive policies, customs or actual practices are unlawful and actually foster and  
211 promote the very acts that Congress legislated against in the first instance.

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***Title VI and Title VIII***

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Title VI and Title VIII were enacted to protect and defend the rights of black persons to equal treatment. The sweep of Title VI is broad, and is intended to eradicate discrimination from all forms of social life. The statute explicitly enlists the power of federal funding agencies in this program. Title VIII is narrower, and is more explicitly focused on providing "fair housing" throughout the United States.

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The legislative history of both statutes makes clear that their purpose is to erase the legacy of racial segregation and discrimination, by equalizing the provision of services to all persons within the jurisdiction of the United States, without regard to color.

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HUD is bound by its own regulations to implement the objectives of Title VI and Title VIII, as well as the general constitutional principle of equal protection of the laws. In this action, Plaintiffs charge that HUD has wholly abrogated these affirmative duties in the State of New York and elsewhere. The action is brought on behalf of Plaintiffs and as a class action, on behalf of African-Caribbean and other minorities that are otherwise eligible for federally insured mortgage loans and denied the benefits of such loans, in part because of HUD' own discriminatory actions and in part, because of HUD' inaction.

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Actions under these sections may properly be brought against federal agencies which have allegedly contravened the guarantee of equal treatment. Penn v. Schlesinger, 490 F.2d 700 (5th Cir. 1973); Baker v. F & F Investment Co., 489 F.2d 829 (7th Cir. 1973) (*overruled on other grounds*, Beard v. Robinson, 563 F.2d 331 (7th Cir. 1977)). Whether the action or inaction of HUD, as alleged by Plaintiffs in this action, constitutes a violation of the statutes is a factual matter that must be determined after trial; plainly, though, the statutes provide a cause of action for racially discriminatory conduct.

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#### **Fifth Amendment of the United States Constitution.**

Finally, Plaintiffs contend that action or inaction of HUD in relation to the imposing, facilitating, encouraging or failing to affirmatively prevent same violates the rights secured to them by the Fifth Amendment of the United States Constitution. It is beyond doubt that the due process clause of that amendment incorporates the constitutional guarantee of racial equality. Any classification that violates the equal protection clause of the Fourteenth Amendment similarly offends the Fifth Amendment. Richardson v. Belcher, 404 U.S. 78, 81, 92 S.Ct. 254, 257, 30 L.Ed.2d 231 (1972); Johnson v. Robison, 415 U.S. 361, 364 n.4, 94 S.Ct. 1160, 1164 n.4, 39 L.Ed.2d 389 (1974). A cause of action against federal officials to redress alleged discrimination may be implied directly under the Fifth Amendment. Davis v. Passman, 442 U.S. 228, 99 S.Ct. 2264, 60 L.Ed.2d 846 (1979) (gender discrimination). If the actions of HUD here implicated would

constitute racial discrimination in violation of the guarantees of the Fourteenth Amendment,  
relief may be granted plaintiffs directly under the Fifth Amendment.

#### HUD Remedies

Therefore, the remedies that Plaintiffs seek against HUD include a

1. declaratory judgment that HUD'

- a. imposition of discriminatory underwriting terms,
- b. facilitation or allowance of arbitrary, capricious and discriminatory mortgage underwriting overlays, by unmonitored participating banks, and/or

2.

- a. failure to exercise due diligence in the oversight of Bank RICO Defendants' FHA mortgage lending practices,

constitutes an abuse of discretion.

3. permanent prohibitory injunction against HUD conspiring with or otherwise facilitating or permitting its approved lenders from imposing underwriting overlays that

- a. contravenes federal or state constitutions and laws inter lia, the Federal Housing Act, Bivens, Bivens Conspiracy; the equal protection, procedural and substantive Due Process Clauses of the 5<sup>th</sup> and 14<sup>th</sup> Amendments', etc.
- b. has a disparate and discriminatory impact on protected classes, in violation of 42 USC § 1981, § 1982, § 1983 or § 1985



- 272 4. permanent mandatory injunction compelling HUD to affirmatively exercise such  
273 *reasonable care and due diligence as will prevent discriminatory lending schemes in the*  
274 *future.*
- 275 5. elimination of the new mortgage insurance policy as it relates to those applying for a 30  
276 *year mortgage with at least a 20% down payment, and*
- 277 6. a refund of mortgage insurance premiums to those that did make a down payment of  
278 20% or more.

279 The APA provides for "any applicable form of legal action, including actions for declaratory  
280 judgments or mandatory injunction." 5 U.S.C. § 703; Hurley v. Reed, 288 F.2d 844, 846  
281 (D.C.Cir.1961) ("[t]he legislative history of the [APA] shows that review of administrative  
282 adjudications by an action for declaratory judgment was deliberately provided to protect any  
283 person suffering legal wrong from rulings of administrative agencies").

**G. Supervisory Liability**

Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*; ECOA, 15 U.S.C. § 1691(a)(1); Bivens, Bivens Conspiracy; Title IV and Title VIII; 42 USC § 1981, § 1982, § 1985, § 1986, § 1988; and New York Law Violations

1 Plaintiff hereby realleges Sections A through F above and seeks to impose liability on all  
2 official capacity and supervisory Defendants, because

3 1. they created the policies, encouraged the customs and oversaw the unlawful actual  
4 practices, and

5 2. supervisors themselves violated the law; knew or should have

6 a. known *inter lia.*, anti-discrimination laws were being violated, and

7 b. prevented management and/or subordinates from such violations leading to  
8 deprivation of Plaintiffs money, property, rights, privileges and immunities.

9 The supervisory liability doctrine, under which the Plaintiffs wishes to hold the supervisors liable  
10 was clearly established at the time of injury, e.g. Plaintiff' statutory rights to equal protection  
11 under the law, equal credit opportunities, fair housing opportunities, rights to property  
12 ownership, contract, substantive and procedural due process, under the 5<sup>th</sup> and 14<sup>th</sup>  
13 Amendments.

14 Furthermore, Plaintiffs, sets forth that while there is no Federal respond eat superior  
15 liability for the actions of these particular – official capacity Defendants, New York State law  
16 permits the imposition of derivative liability on their employers. Therefore, Plaintiffs seek

17 imposition of such liability on supervisory Defendants in all causes of action, in that the  
18 discriminatory practices also violated written NYC and NYS policies, the Defendants may appear  
19 to (but does not) have a defense to this liability, depending on a jury's findings about the actual  
20 "customs and practices."

21 Plaintiff contends that the officers, policy-makers, administrators and management  
22 supervisors are all liable because they had actual or constructive knowledge/notice that it was  
23 highly likely his/her/their subordinates, while on duty, might violate the rights of Plaintiffs and  
24 those similarly situated to, supra, but the supervisors deliberately or recklessly disregarded that  
25 risk by failing to take reasonable action to prevent such a violation, and that failure caused  
26 constitutional injuries to the Plaintiffs and those that are similarly situated.

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#### ***H. Common Law Fraud***

1 Plaintiffs set forth that the Defendants

- 2 1. were in actual possession of superior knowledge, not readily available to the Plaintiffs,  
3 the information was fraudulently concealed from Plaintiffs,
- 4 2. knew that the Plaintiffs would act to their detriment on the basis of this mistaken  
5 knowledge.
- 6 3. was under a known duty to disclose material and/or adverse information,
- 7 4. knowingly and intentionally breached that known duty.
- 8 5. knowingly and intentionally participated in a civil conspiracy to commit fraud.

- 9           6. engaged in acts or practices that were consumer-oriented and had a broad impact on  
10           consumers,
- 11           7. caused injuries as outlined herein, and
- 12           8. departed from the ideals embraced within their respective pledges to Codes of Ethics.

AFFIRMATION

Plaintiff, Ezekiel Frederick, pro se, hereby affirms that the foregoing is true and correct to the best of my knowledge pursuant to the penalty of perjury.

Kings County, NY

Dated: February <sup>2</sup>~~1~~ 2012

A handwritten signature in black ink that reads "Ezekiel Frederick, Pro Se". The signature is stylized with a large, sweeping "E" and "F".

Ezekiel Frederick, Pro Se

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